

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S FINAL APPROVED TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

August 24, 2006

9:30 a.m.

Reported By:

Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION, convened at 9:30 a.m. on August
3 24, 2006, at the State of Arizona, Clean Elections
4 Commission, 1616 W. Adams, Conference Room, Phoenix,
5 Arizona, in the presence of the following Board members:

6 Ms. Marcia Busching, Phoenix, Chairperson
7 Mr. Gary Scaramazzo, Page
8 Ms. Ermila Jolley, Yuma
9 Mr. Carl Kunasek, Maricopa
10 Ms. Royann J. Parker, Pima, Teleconference

11 OTHERS PRESENT:

12 Mr. Todd Lang, Executive Director
13 Ms. Diana Varela, Assistant Attorney General
14 Ms. Paula Ortiz, Executive Assistant
15 Ms. Colleen McGee, Deputy Director
16 Mr. Michael Becker, Voter Education Manager
17 Mr. Daniel Ruiz II, Campaign Finance Manager
18 Mr. Eric Peterson, Administrative Counsel
19 Ms. Christina Murphy, Fiscal Services Manager
20 Mr. Eric Ehst, Clean Elections Institute
21 Ms. Jan Brewer, Secretary of State
22 Ms. Nancy Read, Secretary of State's Office
23 Mr. Andy Gordon, Attorney for Janet Napolitano
24 Mr. Christian Palmer, Arizona Capitol Times
25 Mr. Garrick Taylor, AZ GOP
Mr. Glenn Hamer, AZ GOP
Mr. Paul Davenport, Associated Press
Mr. Paul Peterson, Off Madison Avenue
Mr. Lee Munsil, Len Munsil Campaign
Mr. Lee Stein, Perkins Coie Brown & Bain
Ms. Lauren Lowe, Perkins Coie Brown & Bain
Mr. Howie Fischer, East Valley Tribune
Mr. Ryan Anderson, DeMenna & Associates
Ms. Barbara Klein, League of Women Voters
Mr. Larry Nelson, Committee
Ms. Mary Pickett, Larry Nelson for Mine
Inspector

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1 P R O C E E D I N G

2
3 CHAIRPERSON BUSCHING: I'll give notice that
4 this is a public meeting and possible executive session
5 in the State of Arizona, Citizens Clean Elections
6 Commission. Today is Thursday, August 24th, 2006. It's
7 9:30 a.m. The location is 1616 West Adams, Suite 110,
8 Phoenix, Arizona 85007.

9 The Commission may vote to go into executive
10 session, which will not be open to the public, for any
11 item listed on the agenda for obtaining legal advice.
12 All matters on the agenda may be discussed, considered,
13 and are subject to action by the Commission.

14 And because we have a number of agenda items, I
15 will limit initial comments from the audience to 10
16 minutes and any rebuttal comments to five minutes.

17 The first item on the agenda is call to order,
18 which has already been done.

19 The second item is approval of the August 10th,
20 2006 Commission meeting minutes. Mr. Lang, I understand
21 you have some corrections.

22 MR. LANG: Thank you, Madame Chair. Good
23 morning, Commissioners.

24 COMMISSIONER JOLLEY: Good morning.

25 MR. LANG: On page 24 we have two corrections.

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1 First, regarding the vote on MUR 06-0005, there's no
2 indication of Commissioner Kunasek's vote. And as I
3 recall, he was an "aye" and so I thought that that
4 should be inserted.

5 Also on line eight, it indicates Commissioner
6 Parker called for the vote, "Opposed, nay?" And, in
7 fact, I believe it was you, Madame Chair. So those are
8 my two corrections.

9 CHAIRPERSON BUSCHING: Okay.

10 COMMISSIONER KUNASEK: Point of order. Just in
11 view of the fact that I seconded it would have indicated
12 I voted "aye" to support your conclusion.

13 MR. LANG: Okay.

14 CHAIRPERSON BUSCHING: Thank you. Any other
15 additions or corrections?

16 If not, the Chair will call for a motion.

17 COMMISSIONER KUNASEK: Madame Chair, I move we
18 approve the minutes as corrected.

19 CHAIRPERSON BUSCHING: Okay. It's been moved
20 by Commissioner Kunasek and seconded by Commissioner
21 Scaramazzo that we approve the August 10th, 2006 minutes
22 as corrected. All in favor say, "aye."

23 (Chorus of ayes.)

24 CHAIRPERSON BUSCHING: Opposed, nay?

25 Chair votes aye. Motion carries.

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1 I should note for the record that all
2 Commissioners are present with Commissioner Parker
3 appearing by teleconference.

4 Next item on the agenda, Item III, Executive
5 Director's report.

6 Mr. Lang?

7 MR. LANG: Thanks again, Madame Chair. You
8 have my report there. I would note that matching funds
9 are a big part of what we're now working on. Most of
10 the committees I'm pleased to report are complying and
11 reporting properly with the Secretary of State, so it
12 makes our job quite easy, but we do have a few that rare
13 lingering out there that have not yet reported that are
14 not yet on the agenda. They'll be on the agenda for the
15 next meeting.

16 I'd also mention that we may need to have a
17 meeting before the primary. In other words, next week
18 sometime to deal with matching funds and perhaps one
19 enforcement matter.

20 Every year we do random audits of campaigns,
21 and, of course, those campaigns are never happy to hear
22 about that. And so to allay any fears regarding the
23 method which we -- that we use to select the campaigns,
24 we're working with the Lottery Commission to try to use
25 the lottery equipment to do a random drawing of the

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1 campaigns that will be drawn. Obviously, I think we do
 2 something with 30 balls representing the legislative
 3 districts and go from there. So we're working on that.
 4 That should be fun.
 5 You see the new statistics regarding
 6 participation --
 7 COMMISSIONER SCARAMAZZO: Is that going to be
 8 on, like, the news at 10 o'clock?
 9 MS. VARELA: Don't forget to buy your ticket.
 10 MR. LANG: I'm sure -- I'm sure it will be.
 11 COMMISSIONER JOLLEY: I have a question.
 12 MR. LANG: What a news-worthy event.
 13 COMMISSIONER JOLLEY: How was it done in the
 14 past? Put names in a hat?
 15 MR. LANG: My understanding is a computer
 16 program. Not very interesting. This is more fun.
 17 COMMISSIONER JOLLEY: Okay.
 18 MR. LANG: The addition to the funding
 19 information is that we've now disbursed a total of \$3.12
 20 million dollars, including almost \$200,000 in matching
 21 funds, \$199,852 in matching funds.
 22 Mike Becker has been busy working on the
 23 Candidate Statement Pamphlets, taking into account some
 24 of the statements by Commissioners, we do have some nice
 25 maps and material that Mike secured from the Land

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1 Chase.
 2 Mr. Lang?
 3 MR. LANG: Thank you, Madame Chair,
 4 Commissioners. This is another complaint against
 5 Representative Chase regarding discrepancies in her
 6 report. As you can see in my analysis, this is -- the
 7 other important fact here is that this is in regard to
 8 her 2004 campaign, not her 2006 campaign. It appears
 9 that she had a list of outstanding debts that were, in
 10 fact, expenditures. She's fixed those entries and so it
 11 appears that there is no violation.
 12 In fact, the prior Executive Director notified
 13 her that for Clean Elections purposes there's no money
 14 left in her account. So the concerns which were
 15 legitimate concerns raised by the complainant are, in
 16 fact, unfounded. It's simply a matter of having the
 17 proper reports and the proper information.
 18 She did not transfer -- the key issue for the
 19 Commissioners is, she did not transfer a fund balance
 20 from her 2004 campaign to her 2006 campaign. And for
 21 that reason, I recommend that the Commission find no
 22 violation.
 23 I'd also mention that she -- there's an
 24 allegation that she exceeded her contribution limits in
 25 the 2006 cycle. She did return one check, but, again,

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1 Development. So all those things are going well.
 2 Otherwise, you see the enforcement matters and
 3 we have a lot of enforcement before us today. So, that
 4 concludes my report.
 5 COMMISSIONER KUNASEK: Madame Chairman?
 6 CHAIRPERSON BUSCHING: Commissioner Kunasek?
 7 COMMISSIONER KUNASEK: Todd, with regard to the
 8 very last entry, the complaints, do you have any
 9 comparison as to the number of complaints in this
 10 election cycle as compared to the previous election
 11 cycle?
 12 MR. LANG: Madame Chair, Commissioner Kunasek,
 13 I don't have that data but we can get that for you.
 14 COMMISSIONER KUNASEK: I'm just curious to know
 15 if things are moving along or deteriorating. And I'm
 16 sure the press -- front row press corp here is very
 17 interested in knowing if this is going up or down.
 18 MR. LANG: My hope is it is going down, but
 19 we'll see. We'll take a look for you.
 20 COMMISSIONER KUNASEK: Thank you.
 21 CHAIRPERSON BUSCHING: Any other questions of
 22 Mr. Lang? If not, thank you.
 23 Item IV, consideration and decision whether
 24 there is reason to believe a violation occurred in the
 25 following enforcement matters: (A) MUR 06-0007, Cheryl

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1 that would be a Secretary of State enforcement matter.
 2 Representative Chase is not a participating candidate.
 3 So I recommend the Commission dismiss these
 4 matters.
 5 CHAIRPERSON BUSCHING: Commissioner Jolley?
 6 COMMISSIONER JOLLEY: Yes. I have a question,
 7 Todd. Does this go back to the fact that the software
 8 program that's not up to date through the Secretary of
 9 State's office?
 10 MR. LANG: The amendments will not show, that's
 11 correct.
 12 COMMISSIONER JOLLEY: Okay.
 13 MR. LANG: But we are -- we do have a meeting
 14 scheduled with the Secretary of State. We're hopeful we
 15 will have something for the general election. We will
 16 not have something for the primary.
 17 CHAIRPERSON BUSCHING: Any other questions of
 18 Mr. Lang?
 19 Is there anyone from the public that wishes to
 20 speak to this matter?
 21 If not, discussion among the Commissioners
 22 and/or a motion?
 23 COMMISSIONER SCARAMAZZO: I'll make a motion.
 24 MUR 06-0007, complaint against Cheryl Chase be
 25 dismissed.

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1 COMMISSIONER PARKER: I'll second.
 2 CHAIRPERSON BUSCHING: It's been moved by
 3 Commissioner Scaramazzo and seconded by Commissioner
 4 Parker that we dismiss MUR 06-0007, the complaint
 5 against Cheryl Chase.
 6 All in favor say, "aye."
 7 (Chorus of ayes.)
 8 CHAIRPERSON BUSCHING: Opposed, nay?
 9 Chair votes aye. Motion carries.
 10 Item IV(B), MUR 06-0008, Janet Napolitano.
 11 MR. LANG: Madame Chair, Commissioners, this is
 12 the second complaint filed against the Napolitano
 13 Campaign. In this one it's alleged that a member of her
 14 campaign engaged in what the complainant referred to as
 15 political identity theft. Because if you go to certain
 16 Websites, for instance, "Goldwaterforgovernor.com," you
 17 in fact don't see anything from Goldwater, you get
 18 transferred to the Janet Napolitano Campaign site. And
 19 that is certainly vexing for anyone. I'm sure the
 20 Goldwater folks are quite unhappy about that. But, if
 21 you go to "JanetNapolitano.com," I believe it is, you'll
 22 find a Website that is quite critical of her.
 23 So this sort of cyber squadding and Website
 24 grabbing occurs quite frequently. And for that reason
 25 we've never taken a hostile view to campaigns that grab

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1 domains early because they need to, because otherwise
 2 rogues and opponents will try to get their site.
 3 In this case we had received sworn affidavits
 4 from the Governor indicating that her campaign played no
 5 role in this cyber squadding. In other words, they
 6 neither approved it nor paid for this sort of thing.
 7 And based on their sworn statements, I'm quite
 8 comfortable recommending this matter be dismissed
 9 because it's simply not a violation of the Act.
 10 If the campaign had nothing to do with it, the
 11 campaign can't be held responsible. It's something
 12 quite common. It's something that would irk me if I
 13 were in an opponent campaign, but it's something that
 14 the Commission really can do nothing about.
 15 CHAIRPERSON BUSCHING: Okay.
 16 MR. LANG: The other thing I'd like to mention
 17 is the funds involved in doing such a thing is quite
 18 low. I don't think we're talking about a hundred
 19 dollars.
 20 The other thing is, there is a federal agency
 21 or appointed agency that -- that oversees this and there
 22 is a rep -- an avenue for folks like the Goldwater
 23 Campaign to do something about it through that agency
 24 but not through the Commission.
 25 And for that reason, I recommend that the

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1 Commission find no reason to believe and dismiss this
 2 matter.
 3 CHAIRPERSON BUSCHING: Thank you. Commissioner
 4 Jolley?
 5 COMMISSIONER JOLLEY: Yes. So, in essence,
 6 what's happened is that the political campaign did not
 7 register the domain prior to someone else registering;
 8 is that correct?
 9 So they can -- I mean, you have to
 10 register it.
 11 MR. LANG: That's right. No one in Goldwater
 12 grabbed it. Just like no one in the Napolitano grabbed
 13 the other Napolitano Website. So you have to be
 14 creative, you know, and that didn't happen.
 15 We don't know whether this is someone that
 16 supports Napolitano or someone who actually just wanted
 17 to sell the domain to Goldwater and is doing this just
 18 to annoy Goldwater to get them to pay. We don't know
 19 what the purpose is.
 20 COMMISSIONER JOLLEY: Yeah. Yeah. Okay.
 21 Thank you.
 22 CHAIRPERSON BUSCHING: Any other questions of
 23 Mr. Lang?
 24 Is there anyone from the public that wishes to
 25 speak to this matter?

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1 Any discussion or a motion by the
 2 Commission?
 3 COMMISSIONER KUNASEK: Madame Chair, I would
 4 move that MUR 06-0008, Janet Napolitano, we take the
 5 recommendation of the Executive Director and dismiss the
 6 case.
 7 (Whereupon Commissioner Jolley raises her
 8 hand.)
 9 CHAIRPERSON BUSCHING: It's been moved by
 10 Commissioner Kunasek and seconded by Commissioner Jolley
 11 that we dismiss MUR 06-0008.
 12 All in favor say, "aye."
 13 (Chorus of ayes.)
 14 CHAIRPERSON BUSCHING: Opposed, nay?
 15 Chair votes aye. Motion carries.
 16 Item IV(C), MUR 06-0006, Larry Nelson.
 17 Mr. Lang?
 18 MR. LANG: Madame Chair, before I begin that
 19 discussion, can I update you on some information that
 20 Commissioner Kunasek requested?
 21 CHAIRPERSON BUSCHING: Sure.
 22 MR. LANG: He requested that the enforcement --
 23 as you know, we have eight enforcement cases in '06. At
 24 this time in '04, we had 14. So we're doing a little
 25 better.

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1 COMMISSIONER KUNASEK: Good. Thank you for the
2 prompt response.

3 MR. LANG: Thank you, Colleen.

4 Okay. So now we're on Larry Nelson.
5 Thank you.

6 You see there's a complaint against Mr.
7 Nelson -- he's a participating candidate for State Mine
8 Inspector -- regarding possible violations of Arizona
9 Election Law. We've been -- Daniel Ruiz of our office
10 has been working with Mr. Nelson who has been completely
11 cooperative in trying to resolve what the situation is.
12 And it appears based on -- and Mr. Nelson is here today.
13 And it appears that Mr. Nelson accepted family
14 contribution that put him over the limit.

15 As you see in my analysis, this is inadvertent,
16 it is a violation of the law; and, therefore, I
17 recommend that you find that the Respondent violated ARS
18 16-941 Part 2 and 945(A)(1).

19 There are issues -- the other issues are the
20 mileage reimbursement, but our policy -- substantive
21 policy statement permits volunteers to do exactly what
22 they did in the campaign. So I recommend that you find
23 no reason to believe there was an illegal contribution
24 for the milage.

25 And then the failure to provide complete

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1 information regarding contributions is a requirement of
2 16-904(d). And although the Commission has secondary
3 enforcement authority, I believe this is an Article One
4 violation in this matter primarily; and, therefore, I
5 recommend that we send that to the Secretary of State
6 for their consideration.

7 And then finally, the negative balance appears
8 to be some challenges to Mr. Nelson's treasure that
9 they're working on and it appears that the balance has
10 been rectified; but it was done after the fact. It
11 wasn't done in a timely basis, so there may be a
12 violation of ARS 16-915. Again, for the reasons I just
13 discussed, I recommend the Commission refer that matter
14 to the Secretary of State as well.

15 In terms of reason to believe, I recommend that
16 the Commission find reason to believe only on the first
17 issue -- regarding the first issue of the family
18 contribution limits.

19 CHAIRPERSON BUSCHING: And how a motion would
20 you suggest be that specific to do it just on the one
21 item and to dismiss the other items?

22 MR. LANG: That's -- that's correct --

23 CHAIRPERSON BUSCHING: Okay.

24 MR. LANG: -- Madame Chair.

25 CHAIRPERSON BUSCHING: All right. Any other

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1 questions of Mr. Lang?

2 COMMISSIONER KUNASEK: Yes, with regard to the
3 contribution. The family contribution, has that been
4 refunded?

5 MR. LANG: Madame Chair, Commissioner Kunasek.
6 It's my understanding that has not yet occurred. I'm
7 sure Mr. Nelson would be willing to do that.

8 Regardless of whether it's been refunded, it is
9 technically a violation. The resolution of whether it's
10 refunded and what happens will affect how we -- once we
11 looked into it, what sort of fine we recommend or what
12 sort of resolution we recommend.

13 This is simply the first step to find -- this
14 is simply the finding that there may be a violation.

15 COMMISSIONER KUNASEK: That's what I was trying
16 to find in your letter, where that shows up.

17 CHAIRPERSON BUSCHING: Commissioner Jolley?

18 COMMISSIONER JOLLEY: Yes. I have a question.
19 So what was the total amount that went over the limit of
20 the amount? Is it the 706 or the 707?

21 MR. LANG: Well, spouses are permitted to
22 contribute \$120 and that goes towards the family limit.
23 And it's our understanding Mrs. Nelson contributed \$477.
24 So that's a violation. It's also a violation that the
25 total that the candidate contribute is \$1,160. Family

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1 members count towards that limit.

2 COMMISSIONER JOLLEY: Oh.

3 CHAIRPERSON BUSCHING: Any other questions of
4 Mr. Lang?

5 Is there anyone from the public that wishes to
6 speak to this matter?

7 If not, the Chair will entertain either further
8 discussion or a motion.

9 Commissioner Kunasek?

10 COMMISSIONER KUNASEK: I'm trying to find
11 exactly what the recommendation is. Is the
12 recommendation to initiate a full investigation?

13 MR. LANG: Madame Chair, Commissioner Kunasek,
14 that's my recommendation. It's at the top of page two
15 right before "B".

16 I recommend that they find that the Commission
17 finds reason to believe that he committed a violation --
18 that Mr. Nelson committed a violation of 941.2 and
19 945(A)(1), and then allow us to investigate it and make
20 a recommendation to the Commission down the road.

21 COMMISSIONER KUNASEK: And to the question of
22 the Chairman, does this have to be separated out then or
23 just the recommendation. If we follow the
24 recommendation, you will include all of those various
25 items?

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1 MR. LANG: Madame Chair?
 2 COMMISSIONER KUNASEK: Or am I getting
 3 confused?
 4 MR. LANG: No, Commissioner Kunasek. That's
 5 what we plan to do.
 6 CHAIRPERSON BUSCHING: Now, I'm confused. What
 7 you plan to do is assuming we follow the recommendation
 8 is to investigate the violations of 941.2 and 945(A)(1)
 9 but dismiss and not do anything with respect to the
 10 other complaints?
 11 MR. LANG: Assuming they come into compliance,
 12 yes. That's my recommendation.
 13 CHAIRPERSON BUSCHING: I'm clear now too.
 14 Thank you.
 15 COMMISSIONER KUNASEK: So am I.
 16 Madame chairman, I would move that we
 17 accept the Deputy Director's [sic] recommendation in
 18 06-0006.
 19 CHAIRPERSON BUSCHING: Okay. Thank you.
 20 COMMISSIONER SCARAMAZZO: Second that.
 21 CHAIRPERSON BUSCHING: It's been moved by
 22 Commissioner Kunasek and seconded by Commissioner
 23 Scaramazzo that we find reason to believe that a
 24 violation has occurred with respect to ARS 16-941.2 and
 25 ARS 16-945(A)(1), and assuming that the candidate comes

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1 into compliance with the other matters, dismiss the
 2 other items that were addressed in the Executive
 3 Director's report on MUR 06-0006, Larry Nelson.
 4 Okay. Any further discussion?
 5 If not, the Chair will call for the question,
 6 all in favor say, "aye."
 7 (Chorus of ayes.)
 8 CHAIRPERSON BUSCHING: Opposed, nay?
 9 Chair votes aye. Motion carries.
 10 Next item on the agenda is Item V,
 11 consideration and possible ratification of issuance of
 12 matching funds for reported independent expenditures in
 13 Legislative Districts 6, 8, 16, 22 and 30.
 14 Mr. Lang?
 15 MR. LANG: Thank you, Madame Chair. If you
 16 would -- if I may, I would like to ask you to move to
 17 the side because I have a little PowerPoint
 18 presentation. You can stay there, but I think --
 19 You know what, I'll hold this until Centennial
 20 Leasing.
 21 CHAIRPERSON BUSCHING: Okay.
 22 MR. LANG: All right. So stay where you are.
 23 CHAIRPERSON BUSCHING: All right.
 24 MR. LANG: You have before you a number of --
 25 and I'll just use the Centennial Leasing to show you how

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1 it worked in these cases.
 2 You have before you a number of matching funds
 3 we've issued already. Daniel has been quite busy, as
 4 you can see, working on this.
 5 You have two primary PACs that have been doing
 6 the independent expenditures. You have the Realtors of
 7 Arizona PAC and you have the quality professional -- the
 8 Healthcare Professionals for Quality Healthcare PAC. In
 9 all the cases they've been quite upfront and they have
 10 reported with care exactly how much they've spent and
 11 worked with the Secretary of State. It's been very
 12 straightforward and we know exactly what to match.
 13 You also notice that there's no matching in the
 14 senate race which also resulted in an investigation and
 15 the reason for that is because Representative Rosati who
 16 is challenging Senator Allen is maxed out on her
 17 matching funds, so we no longer need to consider
 18 matching funds for her race.
 19 So you see here how we did it. And, again, the
 20 numbers are quite clear and you will see from the
 21 examples that whether or not they issued matching funds
 22 was an easy one, because in these cases they followed --
 23 they did a traditional ad that actually said, "Vote
 24 For." When you see an ad that says "Vote For," it makes
 25 it quite easy. They're encouraging those folks to vote

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1 for those folks.
 2 Because of that, for instance, in your packet
 3 you have my PowerPoint, the last page it says,
 4 "Experience counts, vote for the team that's proven to
 5 fight for you." Well, that's easy, that's 16-901.01.
 6 It's a very straightforward matter and so we have gone
 7 ahead and issued matching funds.
 8 Now, I know the Commission requires when
 9 there's not -- when we lack -- when you don't have the
 10 cooperation for independent expenditures and it has not
 11 been reported and you have to calculate first whether
 12 it's expressed advocacy, which is also a close call in
 13 this matter. And also what the value is which is
 14 difficult.
 15 I know the Commission requires us to do that,
 16 the way we proceed is we go through the Commission. But
 17 I felt it was important for you to see what we're doing.
 18 And so I'm asking you to ratify this; although, this is
 19 not that situation, this is a straightforward situation
 20 but I wanted you to see how that is working and see the
 21 statistics.
 22 So if you have questions, I'm happy to answer
 23 them but that's pretty much how we went about doing it.
 24 CHAIRPERSON BUSCHING: Mr. Lang, these
 25 reporting items are all listed in the Secretary of

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1 State's Website as I understand. And does someone from
2 your staff go through and just spot-check for
3 reasonableness that, in fact, that what they say that
4 they spent looks like it's reasonable under the
5 circumstances?

6 MR. LANG: Yes. Daniel has been quite thorough
7 about that and Colleen McGee has been helping him. They
8 check and they also look to see what private campaigns
9 have spent on high efficacy voter mailings and that type
10 of thing. These numbers are in that range.

11 It's not -- it's not something you can
12 determine with certainty, but certainly Daniel would be
13 aware if something looks out of whack or unusual. He's
14 been quite thorough and gone through all the reports
15 with care and spoken -- he's had conversations with both
16 of these PACs. So I'm quite comfortable these are
17 accurate and fair reflections of what actually happened.

18 Of course, if we find there's been a mistake,
19 we can come back to the Commission and ask for
20 additional matching funds or the like, but I don't see
21 that happening.

22 CHAIRPERSON BUSCHING: Okay. Thank you. Any
23 other questions of Mr. Lang?

24 MR. LANG: Madame Chair, I might also note that
25 the campaigns due to receive funds would be quick to let

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1 us know if they felt they were getting shorted.

2 CHAIRPERSON BUSCHING: That's true.

3 COMMISSIONER KUNASEK: So I understand, I think
4 I've got it figured out, the left column shows the name
5 of the candidate that received the amount of funds in
6 the right column?

7 MR. LANG: That's correct.

8 COMMISSIONER KUNASEK: Okay. Thank you.

9 CHAIRPERSON BUSCHING: Is there anyone from the
10 public that wishes to speak to this matter?

11 If not, the Chair will entertain further
12 discussion by members of the Commission or a motion.

13 COMMISSIONER PARKER: I move we accept the
14 report.

15 COMMISSIONER KUNASEK: Second.

16 CHAIRPERSON BUSCHING: It's been moved by
17 Commissioner Parker and seconded by Commissioner Kunasek
18 that we accept and ratify the list of matching funds
19 through August 16th.

20 All in favor say, "aye."

21 (Chorus of ayes.)

22 CHAIRPERSON BUSCHING: Opposed, nay?

23 Chair votes aye. Motion carries.

24 Item VI, consideration and decision whether
25 direct mailer paid for by Centennial Leasing constituted

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1 expressed advocacy and estimated cost for matching
2 funds.

3 MR. LANG: Thank you, Madame Chair. Centennial
4 Leasing is an example of a tougher situation. They
5 believe they're not engaged in expressed advocacy, so of
6 course they've not reported.

7 Well, it's not on yet so let's wait for it to
8 warm up. Right?

9 So, they're in a situation where we have to
10 figure out, is this expressed advocacy, and if so, how
11 much was it worth? They've been cooperative. They
12 indicated to us they mailed to high efficacy voters. If
13 the Commission decides to issue matching funds, I think
14 we'll have the information we need to do so. Again,
15 it's a tough call.

16 What I wanted to do is just talk to you about
17 independent expenditures so you can make a decision with
18 Centennial Leasing with a background of what's going on.
19 What I'm going to talk to you about is the example which
20 is Mainstream Arizona, which is the last election cycle.

21 In that case, Mainstream Arizona engaged in
22 issue advocacy and sent out pieces that supported
23 certain candidates who fit those issues and felt -- and
24 did not report. The Commission issued matching funds
25 and we were ultimately challenged in court. And as you

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1 recall, of course, we prevailed. That one was very
2 close to the line; although, I was quite confident as an
3 Assistant AG back then that Mainstream Arizona engaged
4 in expressed advocacy. So you have that example as the
5 tough case and Centennial Leasing is -- is in that same
6 realm.

7 The other two examples are the Realtor PAC and
8 Healthcare Professionals PAC which is clearly expressed
9 advocacy.

10 So do I hit this button?

11 Okay. So you have the definition of 16-901.01:

12 An independent expenditure is an expenditure that
13 expressly advocates the election or defeat of a clearly
14 identified candidate that is made without cooperation or
15 consultation with the candidate, or committee, or agent
16 of the candidate and is not made in concert.

17 You can't have a coordinated effort. It has to
18 be truly independent, you have to have a clearly
19 identified candidate, and it has to expressly advocate.

20 So of course that raises the question, what is
21 expressly advocate? The easy case is when it has the
22 magic words, so called magic words: "Vote For,"
23 "elect," "re-elect," "support" and "endorse."

24 You will notice that political ads are like car
25 ads these days. It is more of a tone and a mood and the

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1 last thing they want to say is, "Vote For." They want
 2 -- you know, they want to say, you know, "Lang, the
 3 candidate for a new age." They want to sound really
 4 slick and fancy.

5 So you -- you just don't see these magic words.
 6 And as the Supreme Court pointed out in McConnell, this
 7 is a distinction without a difference. So looking for
 8 these magic words is not the end of the inquiry.

9 And in this case, the Centennial Leasing case,
 10 we don't have the sort-of magic words. And so you look
 11 at the factors. You look at the factors around the
 12 communication. Is it a general public communication?
 13 You see the examples there direct mailers, newspapers,
 14 and the like. Is it targeted to the electorate of that
 15 candidate?

16 And then does Centennial Leasing case meet
 17 these factors, then it is expressed advocacy. It is
 18 targeted to the electorate of the candidate that they
 19 praise: Allen, and Reagan, and Verschoor.

20 But then the question is, it also has to meet
 21 the second step, it has to have no reasonable meaning
 22 other than to advocate for the election or the defeat of
 23 a candidate. And then you look at the presentation of
 24 the candidate: In favor or unfavorable light, the
 25 targeting, placement, that sort of thing.

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1 urging the community to support. But the key factor
 2 here was that Mainstream Arizona had done this right
 3 before the election and that there was no other
 4 reasonable conclusion as to what the purpose was and the
 5 court agreed. But Mainstream had a general discussion
 6 of issues and that sort of thing.

7 Now, look at Centennial's. Endorsing Reagan
 8 and Allen, but also Verschoor. It was much earlier. It
 9 was during the legislative session. And you have a time
 10 line that Lee Stein produced for us on behalf of
 11 Centennial Leasing. And you can see by the time line
 12 that there was a lot of legislative action ongoing
 13 throughout this time. You also have his letter that
 14 describes this and describes why he believes this is not
 15 expressed advocacy.

16 But, you can see that during the time these
 17 were mailed out, the issue was quite hot. And you
 18 have -- here's the -- here's the key -- and it looks
 19 like expressed advocacy -- it's talking about what a
 20 good job she's doing, she's making a big difference to
 21 the little guy by standing up to the big car dealers,
 22 and that sort of thing.

23 If this had been mailed out a week or two
 24 before the election, I would probably recommend to you
 25 that you find expressed advocacy. I mean, it's that

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1 Again, this appears in Centennial Leasing and
 2 I'll show you the examples, but this looks to be
 3 expressed advocacy because it does paint the candidate
 4 in a favorable light, it's all those things.

5 But it has to have no other -- no other
 6 reasonable meaning and that's the key.

7 When you look at Mainstream Arizona, we felt,
 8 yeah, they tried to come up to another reasonable
 9 meaning but it was a pretext or a sham. We thought it
 10 was expressed advocacy.

11 In this case my conclusion was different.
 12 Here's Mainstream Arizona, "It is time for a change in
 13 politics. These courageous leaders fought to meet our
 14 priorities for better healthcare, better schools." And
 15 of course they try to muck the waters, "Urge our leaders
 16 to continue fighting for Arizona."

17 Now, of course this came out a week before the
 18 election and do you think they really want us to call
 19 the leaders and say, please fight for Arizona? Or do
 20 you think they want them to vote? We concluded we
 21 thought they wanted them to vote.

22 As you can see, it's well written. The person
 23 who vote this new the law and tried to write it within
 24 the law.

25 And then you see the praise of Governor Wagner,

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1 close.

2 Because it was done early and because the
 3 legislature was in session and because it was a hotly
 4 contested bill that they've documented well for us, I
 5 believe ultimately that Centennial Leasing is not --
 6 that this was not expressed advocacy in the sense that
 7 it would trigger matching funds.

8 Senator Allen is similar. You can see again,
 9 it promptly features her. It meets all the criteria.
 10 It features her, it praises her. But, again, it was
 11 about the particular bill that was still up for debate.

12 So I think the Commission has latitude to go
 13 either way. But, ultimately, I think it's not expressed
 14 advocacy because of the importance of this bill to them,
 15 and because it was done months before -- several months
 16 before the primary.

17 Just to show you a much easier case. Here's
 18 the Realtor's, "Vote for the team that's proven to fight
 19 for you." You know, it's a no-brainer. That's clearly
 20 expressed advocacy when it says, "Vote For."

21 I mean it puts her in a favorable light, and
 22 targets the electorate, makes them look good, that sort
 23 of thing.

24 And then here's the Healthcare. "Some
 25 candidates talk about healthcare, Jennifer Burns gets

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1 results. Vote for Jennifer Burns." Again, an easy one.
 2 Even if it didn't say "Vote For," even if it said, call
 3 Jennifer Burns and tell her to keep fighting for
 4 healthcare, I think it would be expressed advocacy given
 5 the nature of this situation, given the fact that you
 6 didn't have this hotly contested bill.

7 So we have a close case here, but that's why I
 8 recommend that the Commission find that there is not
 9 expressed advocacy and the Commission decline to issue
 10 matching funds.

11 CHAIRPERSON BUSCHING: And, Mr. Lang, the time
 12 that these mailers went out, can you refresh the
 13 Commission on the dates?

14 MR. LANG: Yeah. The Reagan mailer was sent on
 15 March 29th and Allen was sent on April 6th.

16 I should also mention that the Secretary of
 17 State did find probable cause there may be a violation
 18 that the Centennial Leasing folks did not register as an
 19 independent expenditure committee and they sent it over
 20 to the Secretary of State.

21 That's a lower standard. That's probable
 22 cause. It's not a final determination. Final
 23 determination is made at the Attorney General's Office.
 24 And while -- I certainly, if I was in the position, I
 25 may well have found the same way. We're making an

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1 alternate determination here. Is this expressed
 2 advocacy or not? It's not, could it be or is it likely
 3 to be. Is it?

4 We have to make the final determination. You
 5 are the judges. And based on the fact there was this
 6 bill ongoing -- and you can see that his discussion of
 7 the time line goes well into May -- based on that, I
 8 don't think it's expressed advocacy under the rules;
 9 and, therefore, I don't think the Commission should
 10 issue matching funds.

11 COMMISSIONER SCARAMAZZO: Seems to me it's
 12 lobbying an issue more than expressed advocacy.

13 COMMISSIONER KUNASEK: And the time. The time
 14 line was far before we're getting into any matching
 15 funds from the Commission or into really a hot-and-heavy
 16 campaign season.

17 CHAIRPERSON BUSCHING: Commissioner Jolley?

18 COMMISSIONER JOLLEY: Yes, I just want to
 19 comment. If these people had chosen not to run for
 20 office again, then this wouldn't be before us right now;
 21 is that correct?

22 MR. LANG: That's correct.

23 COMMISSIONER JOLLEY: Yeah, okay.

24 CHAIRPERSON BUSCHING: Any other questions of
 25 Mr. Lang?

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1 Is there anyone from the public that wishes to
 2 speak to this matter? Sir?

3 MR. STEIN: May I approach?

4 CHAIRPERSON BUSCHING: Please. And state your
 5 name, please.

6 MR. STEIN: My name is Lee Stein. I'm a lawyer
 7 at the Law Firm of Perkins, Coie, Brown & Bain and I
 8 represent Centennial Leasing and Sales.

9 Madame Chairman, Commissioners, thank you for
 10 giving me a few minutes to address you this morning on
 11 the matter.

12 I think your Executive Director has analyzed
 13 the issues well and I'll try to not to repeat his
 14 comments but make a few additional ones. And the point
 15 I really want to focus on is the context here and I
 16 think that's really key to analyzing this issue.

17 As I think you now know, the mailers were sent
 18 out nearly six months before the primary election and
 19 nearly eight, nine months before the general election.
 20 And they were sent out while Centennial was involved in
 21 a very hotly contested legislative battle and we can
 22 considered it really a fight for Centennial's business
 23 life.

24 That legislative battle continued well beyond
 25 the time of the mailers and all the way into June and

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1 into the very last days of the legislative session. The
 2 last week of the legislative session there were attempts
 3 to continue to move the bill and try to get legislative
 4 activity.

5 These pieces were sent for the purpose of
 6 influencing the legislative process as opposed to
 7 electioneering. If they were sent for purposes of
 8 electioneering, it was a waste of money. This was long
 9 before anybody was really actively engaged in
 10 campaigning and long before anybody was paying attention
 11 to who was running for what office and who they should
 12 vote for.

13 So, I want to also ask you to remember the
 14 standard that was described to you. And part of that
 15 standard is, if reasonable minds could differ as to
 16 whether the mailings constituted expressed advocacy,
 17 then you've got to conclude it's not expressed advocacy.

18 Here the mailers say: Please oppose House Bill
 19 2386 or 2070. They talk about the legislative battle.
 20 They talk about the specific legislature. And I think
 21 the memo circulated by your Executive Director really
 22 demonstrates that reasonable minds could differ as to
 23 whether or not it's expressed advocacy.

24 I would submit that Mr. Lang has a reasonable
 25 mind and that he's come to the conclusion that it's not

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1 expressed advocacy. I think you ought to take that into
2 consideration.

3 There has been some discussion about the fact
4 that these mailers were targeted and that they were
5 targeted to certain voters in the district that these
6 representatives or these legislatures represented. And
7 I guess my response to that is, of course they were. Of
8 course they were. You wouldn't send a mailing to
9 somebody who would not be receptive to it, whose voice
10 would not be meaningful to the legislature you're trying
11 to influence.

12 If Centennial had an unlimited budget, they
13 would have send it to every citizen of Arizona. They
14 don't. So they had to send it to people who they
15 thought would have a meaningful voice to the legislature
16 and that's what they did.

17 In lobbying you always look to contact the
18 residence of the legislative district that you're trying
19 to influence so that you get some traction with that
20 legislature. They're going to listen to their
21 constituents, the people they represent, those are the
22 people we were trying to touch. Both -- and I just want
23 to emphasize --

24 (Whereupon a busy signal is heard from the
25 phone indicating Commissioner Parker is no longer

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1 online.)

2 MR. STEIN: I can see what the Commissioner on
3 the phone thought of my argument.

4 CHAIRPERSON BUSCHING: Mr. Stein, if you would
5 just wait a moment and we'll try to reconnect
6 Commissioner Parker.

7 MR. STEIN: Sure. I can start from the
8 beginning if you like.

9 COMMISSIONER KUNASEK: Don't throw the train
10 off the track.

11 CHAIRPERSON BUSCHING: I don't think that's
12 necessary because you only have a limited amount of
13 time.

14 MR. STEIN: Is my time running?

15 CHAIRPERSON BUSCHING: No.

16
17 (Whereupon a recess is taken from 10:09 a.m.
18 until 10:12 a.m. and continues with Commissioner Parker
19 appearing via teleconference as follows:)

20
21 CHAIRPERSON BUSCHING: When we had the
22 interruption, Mr. Stein was speaking, you have
23 approximately five minutes remaining.

24 MR. STEIN: Okay. Thank you. The point I was
25 going to make when -- when we disconnected was that

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1 Representative Reagan and Senator Allen and Senator
2 Verschoor -- if we're including him in this discussion
3 -- were all key to Centennial's opposition to this
4 legislation.

5 Representative Reagan was the Chair of the
6 Commerce Community where the legislation originated in
7 the House and was getting immense pressure to hear a
8 bill, to switch sides, to effect a compromise. Senator
9 Allen was on the Senate Transportation Committee that
10 did hear the bill. She was one of two senators who
11 voted against the bill. Senator Verschoor was the other
12 one. She was the Chairman and Senator Allen was also on
13 the Senate Commerce Committee.

14 This bill likely would have gone back to the
15 House and then to Representative Reagan's committee or
16 to a conference committee where if it would have gotten
17 all the way through the process, where either -- or
18 Senator Allen would likely to participate and probably
19 Senator Verschoor is as well.

20 So, holding on to these legislature was very
21 important and very clear to Centennial's strategy. And
22 that's why they were -- they were chosen for the focus.

23 What I'm -- what I'm trying to demonstrate to
24 you through all this discussion is that the nature of
25 this issue, a legislative battle, the timing of it long

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1 before the primary election and before people were
2 paying attention to elections, the specific legislatures
3 involved, and the language of the mailers themselves
4 which talk about legislative issue, all point you in the
5 direction of this being mailers about a legislative
6 issue and not about an election.

7 And for you -- for you to conclude that the
8 only reasonable reading of these mailers was to add --
9 expressly advocate the election of this identified
10 legislatures, I think would be somewhat extraordinary.
11 And so I would just encourage you to -- to not vote to
12 award matching funds, to not consider these independent
13 expenditures, and to not consider they constitute
14 expressed advocacy.

15 And I just thank you for the opportunity to
16 speak to you. And I want to commend the staff of the
17 Commission for the cooperative way in which they've
18 worked with us in gathering the information and in which
19 they've presented it to you today.

20 CHAIRPERSON BUSCHING: Thank you. Any
21 questions of Mr. Stein?

22 Commissioner --

23 COMMISSIONER PARKER: If no one else does, I
24 have one.

25 CHAIRPERSON BUSCHING: Yes. Commissioner

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1 Parker?

2 COMMISSIONER PARKER: Okay. If given the
3 gravity of the situation regarding the legislature, what
4 was the reason that similar-type mailers were not sent
5 out about the other committee members, either for or
6 opposed to the bill in order to, you know, keep
7 everybody voting the way that you were hoping they would
8 vote?

9 MR. STEIN: The short answer to that question
10 is resources. There is a limited amount of money
11 available for grass roots activity, and Centennial
12 targeted legislatures that it thought were most
13 important to hold down and to make sure that they didn't
14 change their position, and that they were solidly in
15 Centennial's camp on the legislative issue. And that's
16 who they mailed to.

17 COMMISSIONER PARKER: Okay. I understood
18 though that Reagan was the one who had originally
19 sponsored that bill; is that not correct?

20 MR. STEIN: No, that's not correct.

21 COMMISSIONER PARKER: Okay. Then I misread
22 that.

23 Were any of the other committee members on
24 those committees affected by the legislation?

25 Were they looking at tough primaries

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1 coming up?

2 MR. STEIN: I'm not sure I'm understanding your
3 question.

4 COMMISSIONER PARKER: My question is, the
5 Reagan and Allen are facing a fairly tough primary and I
6 didn't know if other members of those two committees
7 that the bill was going through, if those members were
8 also looking at potentially tough primaries.

9 MR. STEIN: Well, I don't know the answer to
10 that question. And I don't want to leave you with the
11 misimpression, Centennial -- Centennial's grass roots
12 activity was not limited to just Representative Reagan,
13 Senator Allen and Senator Verschoor. There were other
14 -- there was other grass roots activity that occurred
15 during the legislative session.

16 And I can't tell you off the top of my head --
17 and, frankly, I don't have any idea whether other
18 members of the committees that were considering the bill
19 or other legislatures were facing tough primaries or
20 not. That's not an issue that we thought about. That's
21 not an issue that we considered.

22 COMMISSIONER PARKER: Okay. I appreciate your
23 response.

24 MR. STEIN: Thank you.

25 CHAIRPERSON BUSCHING: Any other questions of

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1 Mr. Stein?

2 If not, thank you.

3 MR. STEIN: Thank you.

4 COMMISSIONER SCARAMAZZO: Thank you.

5 CHAIRPERSON BUSCHING: Mr. Lang?

6 MR. LANG: Madame Chair, Commissioners, since
7 you're considering this issue, I thought while it's
8 ripe, I want to point out there is one area where I
9 disagree with Mr. Stein. And that is the mailing to
10 high efficacy voters, to me was an indicator this whole
11 thing was a pretext. Ultimately, I resolved that it was
12 not expressed advocacy, it was not a pretext. But I'm
13 just saying when you are considering the factors in the
14 future, when you mail to high efficacy voters, that is
15 and indication this is a political purpose, an election
16 purpose.

17 I appreciate Mr. Stein's explanation as to why
18 they did that. But I think there's a lot of other ways
19 to reach constituents other than high efficacy
20 Republican voters. I think representatives listen to
21 constituents in both parties. So, I don't find that
22 particular argument by Mr. Stein persuasive.

23 But, despite that, given the legislative
24 situation and given the very early timing of the -- of
25 the mailing, I ultimately agree with him that this was

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1 not -- that this does have a legitimate other purpose,
2 which was to keep Centennial Leasing in the good graces
3 of the folks mentioned in these ads.

4 CHAIRPERSON BUSCHING: Okay. Anyone else from
5 the public wish to speak to this matter?

6 If not --

7 COMMISSIONER KUNASEK: Madame Chairman,
8 question of Mr. Lang.

9 In your recommendations I find we have a
10 contradiction in recommendation, so that means we have
11 to split the recommendation up or join them together.

12 My question is, with regard to the second
13 recommendation, do you know what kind of a research the
14 Secretary of State went in to that would have
15 recommended -- that indicated that these other
16 candidates should have matching funds?

17 MR. LANG: Madame Chair, Commissioner Kunasek,
18 I really only recommend one thing, that the Commission
19 determine that this is not expressed advocacy and
20 therefore decline to issue the matching funds.

21 I did use the word "recommend" there and I will
22 fix that in the future on recommendation.

23 COMMISSIONER KUNASEK: Okay.

24 MR. LANG: As to the Secretary of State, I know
25 that -- you know, I've talked to them. I don't know if

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1 they had all the time line information that we had. I
2 don't know when -- I don't remember whether Mr. Stein's
3 letter was written before or after they made the
4 recommendation.

5 But I know that the primary concern there was
6 one that I have here, which was that fact that the
7 mailers were targeted to high efficacy Republican
8 voters. That to me is a clear indicator that this is
9 for political purpose. I mean, it was a political
10 purpose regardless, but an election purpose.

11 Ultimately, based on the very early date -- as
12 I've told you several times -- based on the very early
13 date and based on the very real political battle going
14 on in the legislature for this business, I determined
15 that wasn't the determining result. That factor cuts
16 the other way for me.

17 But, ultimately, I found that it's not
18 expressed advocacy for the reasons we already discussed.

19 CHAIRPERSON BUSCHING: Commissioner Jolley?

20 COMMISSIONER JOLLEY: Yes. I have a question.
21 Todd, in this District, isn't this almost a one-party
22 dominated district?

23 MR. LANG: Yes, I believe so.

24 COMMISSIONER JOLLEY: So, that's all you have
25 is the Republican voters.

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1 MR. LANG: Well, you have Democratic voters
2 there.

3 COMMISSIONER JOLLEY: Well -- thank you.

4 CHAIRPERSON BUSCHING: Any other questions of
5 Mr. Lang or any discussion?

6 If not, the Chair will entertain a
7 motion.

8 COMMISSIONER KUNASEK: Madame Chairman, I would
9 move that we accept the Executive Director's
10 recommendation and not issue matching funds --

11 COMMISSIONER SCARAMAZZO: I would second that.

12 COMMISSIONER KUNASEK: -- on this item.

13 CHAIRPERSON BUSCHING: It's been moved by
14 Commissioner Kunasek and seconded by Commissioner
15 Scaramazzo that we accept the Executive Director's
16 recommendation and not issue matching funds with respect
17 to the mailers sent by Centennial Leasing.

18 All in favor, say "aye."

19 (Chorus of ayes.)

20 CHAIRPERSON BUSCHING: Opposed, nay?

21 Chair votes aye. Motion carries.

22 Item VII, consideration and possible approval
23 of 2007 budget for the Governor's Office of Strategic
24 Planning and Budgeting.

25 MS. MCGEE: Good morning, Commissioners.

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1 Colleen McGee.

2 COMMISSIONER SCARAMAZZO: Good morning.

3 MS. MCGEE: I'm here today to ask for your
4 approval for our fiscal year budget that we must submit
5 to the Governor's Office before September 1.

6 Normally the agency -- I would bring forward
7 our annual budget and we'll do that in December. The
8 Commission normally operates on an annual budget.
9 Because we're not appropriated, this fiscal year budget
10 really does not contain much of the information since
11 we're not appropriated.

12 However, as a state agency we are required to
13 submit a fiscal year budget. So, basically, this just
14 gives you our actual expenditures through June 30th of
15 2006, our '07 through '09 projections for revenue.

16 If you have any questions, I'll be glad to
17 answer them for you.

18 COMMISSIONER KUNASEK: Question.

19 CHAIRPERSON BUSCHING: Commissioner Kunasek?

20 COMMISSIONER KUNASEK: Yes. Colleen, I noticed
21 that this agency operates without any out-of-state
22 travel, but I do understand there has been some
23 out-of-state travel. So is that an in-kind contribution
24 or where did the funds for that travel come from?

25 MS. MCGEE: No. The agency pays for out of

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1 state once a year, Commissioner Kunasek. That's for
2 when the Commissioners and some staff members attend the
3 COGEL convention. Because of the time frame that this
4 covers, the COGEL is not -- it does not necessarily
5 include it because this is for fiscal year only. And
6 normally in December when we -- that will be in our '07
7 budget that I present to you at the end of the year.

8 COMMISSIONER KUNASEK: What's COGEL?

9 MS. MCGEE: It's the Counsel on Governmental --

10 COMMISSIONER JOLLEY: Ethics.

11 MS. MCGEE: -- Ethics.

12 COMMISSIONER JOLLEY: I think laws.

13 MS. MCGEE: That the Commission, all the
14 Commission Members have the opportunity to attend. This
15 year I think it's in New Orleans in December, the first
16 week in December.

17 But we pay for it out of our own budget. We
18 don't receive any contributions for the Commissioners'
19 travel.

20 COMMISSIONER KUNASEK: Okay.

21 CHAIRPERSON BUSCHING: Ms. McGee, could you
22 refresh our recollection on what the little check boxes
23 "ML" and "budget" mean throughout here?

24 MS. MCGEE: It's for -- if it's going to be a
25 performance measure. As you might be aware of, the

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1 state workers received a pay-for-performance, a 2.5
 2 pay-for-performance pay raise. And each state agency
 3 must develop pay-for-performance measures.
 4 That's not effective until January of 2007.
 5 And that information applies to if it's going to be one
 6 of your measures or not for performance. If that helps.
 7 And if it's budgeted, if it's already
 8 budgeted -- because we're not appropriated, we don't
 9 have to budget certain information because we have our
 10 17,100 and our 18,000 indexes. And that's how the
 11 Commission is budgeted because of the statute.
 12 So the boxes really do not pertain to us
 13 because we're not an appropriated agency. But it deals
 14 with the pay-for-performance measures that other
 15 appropriated state agencies have to report to the
 16 Governor on.
 17 CHAIRPERSON BUSCHING: When you say
 18 "appropriated agency," you mean that the legislature
 19 appropriates funds to keep the agency operating?
 20 MS. MCGEE: That's correct. That's correct.
 21 CHAIRPERSON BUSCHING: Okay. Any other
 22 questions of Ms. McGee?
 23 If not, the Chair will entertain a
 24 motion.
 25 COMMISSIONER KUNASEK: Madame Chair, I would

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1 move that Item VII, approval of the budget request be
 2 approved.
 3 COMMISSIONER PARKER: Second.
 4 CHAIRPERSON BUSCHING: It's been moved by
 5 Commissioner Kunasek and seconded by Commissioner Parker
 6 that we approve the 2007 budget for Governor's Office of
 7 Strategic Planning and Budgeting.
 8 All in favor say, "aye."
 9 (Chorus of ayes.)
 10 CHAIRPERSON BUSCHING: Opposed, nay?
 11 Chair votes aye. Motion carries.
 12 MS. MCGEE: Thank you, Commissioners.
 13 COMMISSIONER SCARAMAZZO: Thank you, Colleen.
 14 COMMISSIONER JOLLEY: Thank you.
 15 CHAIRPERSON BUSCHING: Item VIII, consideration
 16 and possible approval of probable cause and conciliation
 17 agreement in the following enforcement matter: (A), MUR
 18 06-0001, Janet Napolitano.
 19 Mr. Lang?
 20 MR. LANG: Thank you, Madame Chair,
 21 Commissioners. This is the first investigation
 22 regarding Napolitano. This regards her Website. As you
 23 recall, her Website went up on March 1st and with some
 24 bells and whistles, and more bells and whistles were
 25 added later, and also there were a number of e-mails

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1 sent out all through their vendor and a complaint was
 2 filed. We did an investigation. You already approved
 3 the audit report.
 4 And what, you know, I glean from the audit
 5 report that I think is most important is that it appears
 6 that what Napolitano -- the campaign allocated for the
 7 monthly payment, was an accurate reflection of the value
 8 that they received. The monthly payment was a little --
 9 was \$3,055.55 as I recall -- yeah. That's right. And
 10 the audit revealed that is an accurate portrayal of what
 11 was actually received.
 12 You see through my probable cause
 13 recommendation, my analysis, it says basically we take
 14 the Napolitano Campaign at their word. We have sworn
 15 affidavits from them but basically everything they've
 16 done was accurate and what they told us was accurate and
 17 it was born out through the auditors.
 18 And I want to thank the campaign for their
 19 continuing patience and cooperation. This has been a
 20 long process and a difficult one and we often disagreed
 21 on various issues, but they continued to cooperate
 22 despite the disagreement.
 23 Ultimately, I concluded that the Napolitano
 24 Campaign incurred a payment obligation on March 1st when
 25 she received the benefit. Now, the benefit on that day

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1 was probably just the Website and a few e-mails. But
 2 ultimately we agreed with the Napolitano Campaign that
 3 this was part of a larger contract, the contract that
 4 was ultimately put into writing on March 15th. And that
 5 contract was an all-encompassing contract for Websites,
 6 for e-mails, and for advice and support from the vendor,
 7 Integrated Web Strategies.
 8 So we felt that that whole contract went into
 9 being on March 1st; so, therefore, she had an obligation
 10 to pay for that on March 1st. And we determined their
 11 value of \$3,055.55 was a fair value and so she needed to
 12 have that much on hand. As you know from the audit, she
 13 did not have that much on hand. She was short \$482.42,
 14 which was a violation of our rules, 104(d)(6).
 15 The reason we concluded that is because we
 16 felt -- we disagreed with the Napolitano Campaign. We
 17 disagreed with them on a number of legal issues. And,
 18 of course, I take them on their word. I agree that this
 19 is true. They endeavored greatly to comply with what
 20 they believe the requirement of the law was. So I don't
 21 doubt that for a moment. But, ultimately, we disagreed
 22 on what those requirements were.
 23 They relied ultimately on the reoccurring
 24 administrative expense exception to the ordinary
 25 reporting rule. As you recall, you have to pay on the

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1 1st, you have to have that money on the 1st under our
2 rules, because our rules are when a benefit is received
3 a debt is incurred, you have to report that. Unless it
4 is a reoccurring expense for: Utilities, light bill,
5 office supplies, staff.

6 Ultimately, they felt that a consultant is akin
7 to staff and we disagree. We don't think that
8 consultants are an administrative expense, because a
9 salary is different than what's paid to consultants even
10 if the services are rendered over several months. But,
11 again, it's a close call and it's -- reasonable minds
12 could disagree on that.

13 But based on our -- our view of that -- the
14 other point, of course, is if you allow consultants to
15 be administrative in nature, ultimately you're opening a
16 giant loophole that can be used to exploit the law and
17 delay matching funds by all the campaigns. It would be
18 a real problem.

19 The other thing to remember is this exception,
20 which is not in the law, was based on the FEC's own
21 regulation. And they draw a distinction between salary
22 and staff and Commission consultants, and we're
23 comfortable with that distinction because we think it's
24 a meaningful one.

25 So I think we do have the \$482 violation.

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1 Given the fact that it appears a number of
2 campaigns have done what Napolitano did, that is pay
3 consultants after the fact, given the fact that it's a
4 close call, and we ultimately entered into a proposed
5 conciliation agreement that you have before you, despite
6 the violation and my recommendation that there's a \$500
7 fine, I recommend the Commission approve the
8 conciliation agreement because of the factors I've told
9 you.

10 And you will hear legal advise from Diana
11 before you make your decision.

12 Because of that and because of the fact that
13 Napolitano Campaign tried to comply with the law,
14 because of the fact other campaigns have made the same
15 mistake -- prominent campaigns -- and because it's a
16 very close call, and because we don't have a rule on
17 this reoccurring expenditure -- and that's something I
18 plan to address after the election -- I believe that in
19 this case a conciliation agreement to comply with the
20 regulations as we see them, comply with the requirements
21 and adjust the contracts accordingly now and in the
22 future, that I think no fine -- that the Commission
23 should waive the \$500 fine.

24 And for that -- I'm happy to answer your
25 questions. But for those reasons, I recommend that the

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1 Commission find the violation but then approve the
2 conciliation agreement.

3 CHAIRPERSON BUSCHING: Thank you. Are there
4 questions of Mr. Lang?

5 COMMISSIONER KUNASEK: I'm a little confused.
6 In one point you said you were recommending a fine, then
7 you're going to waive the fine and didn't see anything
8 about it in that conciliation agreement.

9 Where is it in the recommendation? Is it on
10 the --

11 MR. LANG: It's on the last page.

12 COMMISSIONER KUNASEK: Last page?

13 MR. LANG: Madame Chair, Commissioner Kunasek,
14 it's on the last page of my probable cause
15 recommendation, on page seven.

16 I recommend a fine of \$500. But then the
17 conciliation agreement was just entered into and I
18 apologize that, these things take a while to hammer out.
19 We just entered into that and that there's no fine
20 indicated.

21 COMMISSIONER KUNASEK: Okay. I see that.

22 CHAIRPERSON BUSCHING: Other questions of Mr.
23 Lang?

24 Is there -- oh, go ahead. Mr. Kunasek?

25 COMMISSIONER KUNASEK: Excuse me. The audit

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1 did show then, if we accept all of the corrections in
2 the file, it did show there was a lack of 400-and-some
3 dollars in funds that were obligated without the funds
4 being present?

5 MR. LANG: Madame Chair, Commissioner Kunasek,
6 it's actually not quite that simple. I wish it were.

7 What the audit showed is that they received a
8 value of I think approximately \$2,500 in the time period
9 we're discussing. And so the audit did not show a
10 violation.

11 We determined a violation as a matter of law
12 because we felt they were obligated to pay for the
13 entire value of the contract on the 1st.

14 If you -- if you apply the reoccurring expense
15 rule, then you don't have that problem. Also, if you
16 allow them to just pay for things as they go along, you
17 don't have a violation. But, again, because they had an
18 ongoing contract with services, we felt there was a
19 violation.

20 But I think that's an important distinction.
21 In fact, the audit, you know, that they reasonably
22 thought they had enough money on hand to pay for the
23 sort-of ad hoc value of each thing received as it went
24 along.

25 That's another reason why I recommend no fine.

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1 Because we're finding as a matter of law, you have to
 2 pay for the whole contract up-front. Eventually, they
 3 got enough money to do that, but not on the 1st.
 4 COMMISSIONER KUNASEK: Got to have good credit
 5 to do that if you are going to buy a car or house
 6 though.
 7 MR. LANG: Well, that's one reason for the
 8 rule, some campaigns are more able to get credit than
 9 others.
 10 COMMISSIONER KUNASEK: But the credit still
 11 negates the obligation?
 12 MR. LANG: That's right. Under our view.
 13 COMMISSIONER KUNASEK: I have no further
 14 questions.
 15 CHAIRPERSON BUSCHING: Any other questions of
 16 Mr. Lang?
 17 Is there anyone from the public that wishes to
 18 speak to this matter? Sir?
 19 MR. HAMER: Yes.
 20 CHAIRPERSON BUSCHING: Come forward and state
 21 your name, please.
 22 Time is limited to 10 minutes.
 23 MR. HAMER: I'll be briefer than that. Glenn
 24 Hamer the Executive Director of the Arizona Republican
 25 Party.

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1 with one of the most sophisticated Web vendors in the
 2 United States. I don't want to be a commercial for
 3 them, given that they're not helping our cause in the
 4 governor's race. But it's probably one of the best
 5 vendors on planet Earth.
 6 And we've heard a number of different
 7 explanations by the Napolitano's Campaign on the true
 8 value. We heard \$1,000. We heard some other figures
 9 that they didn't even come close to passing the laugh
 10 test.
 11 We believe that that -- if we were to say that
 12 the expenditure occurred on March 1st, and that there
 13 was a comprehensive plan in place with IWS and Governor
 14 Napolitano's Campaign, we believe that at the very least
 15 the 75 percent termination figure, which I believe is --
 16 I grew up in New York, so I can't say I passed AIMS --
 17 which we believe is -- would be \$20,675. Then if you
 18 subtract the Governor's cash on hand, which again it
 19 would be miraculous if all that cash was on hand was
 20 available the second she launched, I question whether or
 21 not that was really the case, that the fine should be
 22 based on \$18,101.87.
 23 And I believe with all due respect that if the
 24 Commission finds that there's a violation, I believe
 25 that that would be an appropriate finding. But if the

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1 Thank you, Madame Chair and Members of the
 2 Commission for the chance to speak today and I
 3 appreciate it.
 4 I know that Todd Lang and the staff of the
 5 Commission worked very hard on this difficult issue to
 6 produce all the documents that they have. And we -- we
 7 do agree with -- with Todd Lang's conclusion that there
 8 was a violation. We believe that that is
 9 extraordinarily clear. But I must say that I disagree
 10 quite strongly with the conclusion that there should be
 11 no penalty for -- for the violation.
 12 It is clear that the whole contract was entered
 13 into at the latest March 1st. Mr. Lang's report makes
 14 clear that there were very serious discussions before
 15 that time, and we would still contend that -- that an
 16 agreement and an expenditure under Arizona law took
 17 place before March 1st.
 18 But -- but let's say March 1 is the day that
 19 that agreement -- that the expenditure took place under
 20 Arizona law. We would agree it does seem quite
 21 reasonable that it wasn't -- things were not done on an
 22 a la carte basis, but that there was a full agreement, a
 23 full sophisticated Web strategy.
 24 Let's remember that the Governor entered into
 25 this contract -- the Campaign entered into the contract

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1 Commission doesn't even fine the Governor's Campaign one
 2 penny, I -- with all due respect -- I believe it's going
 3 to call into question the fairness of this Commission.
 4 And, again, I -- I have nothing but positive
 5 things to say about our dealings with Todd Lang and the
 6 staff here. I know it's difficult. It's -- there are
 7 some difficult issues raised. But first impressions
 8 matter and the fact that the Governor was able to go out
 9 with a very, very sophisticated campaign Web strategy.
 10 And perhaps we wouldn't have been so engaged and
 11 interested if that e-mail strategy didn't span half of
 12 the Republican leaders in the state.
 13 Again, I want to try to be careful with my
 14 language but I'll close on -- with this note, that if
 15 the Commission finds a violation, I believe that that
 16 will be a correct conclusion. But if -- if that fine is
 17 waived, a \$500 fine which I would argue is a fraction of
 18 what the fine should -- should be, it will call into
 19 question the Commission's fairness.
 20 And I thank you for your time.
 21 COMMISSIONER SCARAMAZZO: Thank you.
 22 CHAIRPERSON BUSCHING: Any questions of Mr.
 23 Hamer?
 24 Mr. Hamer, have you had an opportunity to
 25 analyze other candidates with respect to this consultant

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1 issue and reoccurring administrative expense issue?
 2 MR. HAMER: No. No, I have not.
 3 CHAIRPERSON BUSCHING: Okay. Thank you.
 4 COMMISSIONER KUNASEK: Question on that
 5 consultant. You made a comment that this consultant
 6 that was hired by this campaign was perhaps one of the
 7 most -- if not the most -- sophisticated campaign
 8 consultant, Website developer for campaigns in the
 9 nation.
 10 What does this consultant charge or have you
 11 any knowledge of what they charge other statewide
 12 candidate races in other states?
 13 MR. HAMER: I -- I do not know that answer.
 14 But I know that their offices are a lot nicer than ours
 15 at party headquarters. So, I'm assuming with all
 16 seriousness, it's a nice fee.
 17 And this was the consultant that made his name
 18 during Senator McCain's 2000 run for president. And if
 19 you do Google hits, it's just off the charts.
 20 So, again, we don't take issue with going after
 21 the best, but we take issue with trying to characterize
 22 that as something that has such a limited value. It's
 23 just not -- it's -- it's -- I just don't believe that
 24 that's an accurate reflection.
 25 And I believe the termination clause in the

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1 payday?
 2 You can probably make an argument for
 3 everything they do. And the auditor made it very clear,
 4 that there are services there that he couldn't even
 5 compare because the sophistication level is off the --
 6 off the charts.
 7 So, the fact that the Governor Napolitano's
 8 campaign is trying to say that, well, it really wasn't
 9 an argument and it was really worth \$1- or \$2,000. I
 10 doubt very seriously that there is another campaign in
 11 this country that that consulting service would take --
 12 unless there was a special friendship -- with some
 13 feeling that they would only get \$1- or \$2- or \$3,000.
 14 That's my personal feeling.
 15 When you deal with high-level consultants,
 16 whether they're Internet consultants or other campaign
 17 professionals, when you get the best and you go after
 18 the best, you pay for that.
 19 COMMISSIONER KUNASEK: Thank you.
 20 CHAIRPERSON BUSCHING: Thank you.
 21 MR. STEIN: Thank you.
 22 COMMISSIONER SCARAMAZZO: Thank you.
 23 CHAIRPERSON BUSCHING: Anyone else from the
 24 public wish to speak to this matter?
 25 Sir, come forward and state your name. And

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1 contract is the more appropriate trigger to determine
 2 what the penalty should be, and that's why I'm
 3 astonished that there can even be a recommendation to --
 4 to waive -- to waive a \$500 fine.
 5 COMMISSIONER KUNASEK: Did in the case -- and I
 6 don't know how much you know about the McCain 2000
 7 campaign or 2000 -- whatever it was? 2000?
 8 MR. HAMER: 2000.
 9 COMMISSIONER KUNASEK: Did they sign a contract
 10 based on good faith, I guess? Or did they want money
 11 up-front?
 12 MR. HAMER: Well, I -- I don't know. I mean --
 13 but what I will say about that is that that was the
 14 campaign that made this consultant and that firm a
 15 national name. So, I wouldn't be surprised if there
 16 were different terms of agreement and also the federal
 17 laws are different than -- than the Clean Elections --
 18 COMMISSIONER KUNASEK: Okay.
 19 MR. HAMER: -- regime. But at this point, as
 20 we fast-forward to 2006, there's just -- the question I
 21 would ask is, is there any other client outside of
 22 perhaps charitable work they do, that they would even
 23 look at if they thought they would get a \$1,000 payday?
 24 Is there any client they would look at in a
 25 serious way, in the political field, for a \$3,000

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1 you're limited to 10 minutes, please.
 2 MR. GORDON: Thank you, Madame Commissioner,
 3 Members of Commission. Andy Gordon on behalf of the
 4 Napolitano Campaign.
 5 This has been a long investigation. It has
 6 prompted a number of interesting and spirited
 7 conversations between Mr. Lang and the staff. I
 8 appreciate the Commission's professionalism in exploring
 9 what is an issue that we see very differently.
 10 What this has come down to is a question of,
 11 when do you record as an expenditure your monthly
 12 payment to your campaign consultants? I, and some of
 13 you may or may not know, have been involved in doing
 14 campaigns in Arizona for well over 20 years. There is
 15 no doubt in my mind that when you retain general
 16 consultants -- and IWS is one of our general
 17 consultants -- and they're going to be paid monthly for
 18 a stream of services that they provide throughout the
 19 life of the campaign, that until this year, those
 20 expenditures are recorded as of the time of payment, not
 21 prior to the time the services are rendered.
 22 The position that the Commission is taking here
 23 is that payments to consultants even though they're
 24 monthly and even though they're regular, are to be
 25 paid -- are to be shown as an expenditure at the

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1 beginning of the month prior to the time the services
2 are received rather than after the service is received.

3 That's the narrow question that this has boiled
4 down to. There are lots of other allegations and
5 questions along the way, but that's the question.

6 I apologize for inundating the Commission with
7 a number of, kind of, long letters from me, but I think
8 it's an important issue because this is a very dramatic
9 change in how campaigns are going to have to report
10 consultants. I think it is laden with lots of problems
11 for reasons I've said.

12 If you classify someone as an employee, then
13 you're going to show them at the end of the month. If
14 you classify them as a consultant, you're going to show
15 them at the beginning of the month. We've been very
16 candid with the Commission. We -- our deal with IWS is
17 that he would get paid \$27,500 for the life of the
18 campaign, payable in monthly payments to perform
19 services throughout the life of the campaign.

20 Again, based on my experience, and I know some
21 of you have experience running for elective office,
22 generally you say, okay, you're going to get paid for
23 this from the campaign, we'll pay you monthly payments
24 along the way because that's how you're providing the
25 services. This is a huge change from that. There is no

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1 statute that requires this.

2 As you know from my letters, I think the
3 Commission's interpretation of the law here is
4 absolutely incorrect. That to say that I have to show
5 as an extension of credit an obligation for services not
6 yet received, is just kind of nutty.

7 The example I've used with Todd any number of
8 times is, it's like if I call the girl across the street
9 to see if she can baby-sit my kids next Saturday. That
10 constitutes an extension of credit even though she
11 hasn't done the baby-sitting yet.

12 So Todd's right. There is a huge difference in
13 how we view. Frankly, if it was viewed on an a la carte
14 basis -- which we weren't buying here -- I mean, if it
15 was viewed as an a la carte basis, we had enough money
16 the first day to view the Website and the e-mails that
17 went out that day.

18 I think it would probably be more useful if I
19 answered your question because you've seen me in
20 writings so much you probably know agnosium what I have
21 to say about this.

22 If you have any questions.

23 CHAIRPERSON BUSCHING: Thank you. Commissioner
24 Jolley?

25 COMMISSIONER JOLLEY: Yes, I have a question.

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1 When that Website went up, I was -- well, I thought it
2 was a very simplistic type of Website and then it
3 developed over the months, so a thousand dollars would
4 have been a reasonable figure on March 1st. Probably by
5 March 31st, it had become more sophisticated.

6 MR. GORDON: There's no question that's true.
7 And I think -- and I think that's what the audit report,
8 in fact, shows. That the initial Website was very
9 simple. The Website that is up right now, I'm very
10 proud to say is very sophisticated, wonderful Website.
11 But it has definitely changed over time.

12 CHAIRPERSON BUSCHING: Thank you. Commissioner
13 Kunasek?

14 COMMISSIONER KUNASEK: Yes. I'm intrigued by
15 your baby-sitter analogy. However, if you were to call
16 the girl across the street or the baby-sitter and you
17 say how much for next Saturday, but services hadn't been
18 performed.

19 If that question was, how much would you charge
20 me to baby-sit every Saturday night for the next six
21 months, it's different question.

22 MR. GORDON: With all due respect, Commissioner
23 Kunasek, it's not a different question because --

24 COMMISSIONER KUNASEK: I'm going to pay you
25 every week whether you baby-sit or not.

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1 MR. GORDON: Well if I agreed to pay every week
2 whether you baby-sit or not, then I just entered an
3 agreement to pay.

4 There is no agreement to pay him if the
5 services weren't rendered. That's the key. That's the
6 key difference. There's no agreement to pay if the
7 services aren't rendered. He has an obligation to
8 render the services. He quits rendering the services,
9 our obligation to pay goes away.

10 COMMISSIONER KUNASEK: And then that takes away
11 your obligation for cancellation of contract?

12 MR. GORDON: Right. Absolutely.

13 COMMISSIONER KUNASEK: But if you change
14 babysitters, change consultants, you have an obligation
15 to pay the cancellation of that contract.

16 MR. GORDON: At the time the contract is
17 cancelled. Not before then. Because the cancellation
18 of the contract, Commissioner Kunasek, is for foregone
19 services in the future, not for services rendered up to
20 that point.

21 The reason you see penalty clauses -- and you
22 may well be aware of this from your own experiences --
23 the reason you see penalty clauses in contracts with
24 political consultants is because they are foregoing
25 other work. So if you cancel the contract halfway down

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1 the line, they then can't do that work. That's the
2 reason for it. It's not valuing the services that have
3 been rendered, it's the exact opposite. It's valuing
4 the services that haven't been rendered and that's why
5 it diminishes over that time.

6 COMMISSIONER KUNASEK: I didn't understand this
7 contract was that kind. I thought it was an installment
8 payment contract that you paid whether services were
9 rendered or not.

10 MR. GORDON: It's clear -- excuse me. I
11 apologize. I didn't mean to cut you off.

12 COMMISSIONER KUNASEK: That's fine.

13 MR. GORDON: Commissioner Kunasek, it's not an
14 installment payment contract with all due respect. An
15 installment payment contract is like when I buy a car --
16 which frankly I just did -- and I'm going to be paying
17 the Honda service people for the next five years a
18 certain amount each month, that's an installment
19 contract under Article Two of the UCC. I received the
20 goods and I will then pay it over time.

21 But this is a stream of services. I don't
22 receive that stream of services up-front. He quits
23 providing the services, I quit making payments. And
24 that's why up until now these have been shown as
25 expenditures when paid as opposed to previously to that.

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1 COMMISSIONER KUNASEK: So the value then of the
2 initial Website, although as Commissioner Jolley has
3 indicated may not have been all that sophisticated, the
4 value of that initial contract -- initial service was
5 far less than the value of the ongoing services; is
6 that --

7 MR. GORDON: It was just a fraction of the
8 \$3,055 monthly fee, yes. Absolutely.

9 COMMISSIONER KUNASEK: All right. Thank you.

10 CHAIRPERSON BUSCHING: Other questions of Mr.
11 Gordon?

12 If not, thank you.

13 MR. GORDON: Thank you. Thank you.

14 Oh, I guess I should say, and despite our
15 differences -- excuse me. I'm sorry.

16 And despite our differences on what the law is,
17 it is important to us to put this behind us. We
18 understand the Commission's desire to let other
19 candidates know how this will work, and that's why we're
20 -- I'm authorized on behalf of the Governor's Campaign
21 to enter into the conciliation agreement.

22 I forgot that part. Thank you.

23 CHAIRPERSON BUSCHING: Thank you.

24 MR. GORDON: Thank you very much.

25 CHAIRPERSON BUSCHING: Is there anyone else

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1 from the public that wishes to speak to this matter?

2 If not, I would like some legal advice. So I'm
3 going to make a motion that we go into executive
4 session. Is there a second?

5 COMMISSIONER KUNASEK: I would second that.

6 CHAIRPERSON BUSCHING: Okay. It's been moved
7 and seconded that we go into executive session to obtain
8 legal advice.

9 Before we vote on the motion, I need to read
10 that: Minutes of and discussions made in an executive
11 session are confidential pursuant to ARS Section
12 38-431.03(B) and shall not be released to anyone unless
13 specifically authorized by law.

14 With that, the Chair will call for the
15 question, all in favor say "aye."

16 (Chorus of ayes.)

17 CHAIRPERSON BUSCHING: Opposed, nay?

18 Commissioner Parker, did you vote?

19 COMMISSIONER PARKER: I voted "aye."

20 CHAIRPERSON BUSCHING: Okay. Chair votes aye.
21 Motion carries.

22
23 (Whereupon the public retires from the meeting
24 room.)
25

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1 (Whereupon the Commission is in executive
2 session from 10:53 a.m. until 11:45 a.m.)
3

4 (Whereupon all members of the public are
5 present and the Commission resumes in general session.)
6

7 CHAIRPERSON BUSCHING: Okay. We are now back
8 in open session. I want to thank the members' of the
9 public patience. Obviously, we have had a number of
10 arguments from a number of very knowledgeable and
11 highly-qualified people, and it took a fair amount of
12 time to sort through those legal arguments and get legal
13 advice on each one of them.

14 But we are now back in open session and I think
15 I'll turn first to Mr. Lang and see if you have anything
16 you want to summarize or say at this point before I open
17 it up for questions and discussions among members of the
18 Commission.

19 MR. LANG: Thank you, Madame Chair,
20 Commissioners. You've already heard my presentation and
21 the other folks' thoughts.

22 I would mention again my concern here is that
23 Mr. Gordon's interpretation of the law is contradictory
24 to the purpose of the law and the necessity of the law
25 regarding matching funds; and, therefore, you know, you

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1 know, that's why I have real concerns about his
2 position. Because I think my view of the law is correct
3 and I think also my view of the law upholds matching
4 funds and doesn't allow people to play games by calling
5 things reoccurring services contracts when they really
6 aren't to delay the issuance of matching funds.

7 The other clarification I want to make is once
8 the contract was entered into on March 15th, that's when
9 the expenditure of the full amount of the contract went
10 into place for whatever was remaining on the contract,
11 \$21,000 or what have you. And, again, the audit
12 indicated or reflected the fact that they did have
13 enough money on hand to pay that.

14 So whether, you know, given my view that it's
15 not a reoccurring expended contract, they still had
16 enough money on hand on the 21st [sic] to pay the full
17 amount. It's just that up-front on March 1st that was
18 the issue.

19 Again, I remind the Commission that this is
20 based on the FEC regulations, and the FEC certainly
21 distinguishes between consultants and staffers. I also
22 point out the FEC federal regulations, they're not
23 concerned about matching funds. So that issue doesn't
24 even come into place with them. With us, matching funds
25 is the whole ball of wax. So it's much more important

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1 here -- this issue is much more important here.

2 Unless you have questions.

3 CHAIRPERSON BUSCHING: But having said that,
4 you're still willing to enter into the conciliation
5 agreement?

6 MR. LANG: That's right. Because as Mr. Gordon
7 alluded to, there is new issues and there are a number
8 of campaigns out there that appear to have done what the
9 Napolitano Campaign did, which is pay after the fact.
10 This is an opportunity to educate folks which are trying
11 to comply with the law on both parties and to let them
12 know, hey, we think this is a problem. And the
13 Napolitano folks agree to address it, and if you agree
14 to address it right away, I wouldn't recommend a penalty
15 that in that case as well.

16 CHAIRPERSON BUSCHING: Okay. Thank you.

17 Are there questions by the Commissioners
18 or discussion by the Commissioners?

19 I would say -- I'll add some discussion -- that
20 after having listened to the arguments of Mr. Lang, Mr.
21 Hamer, and Mr. Gordon and realizing that they differ
22 widely on their positions, I have come to the conclusion
23 based upon what I've heard and the legal advice that has
24 been received, that probably entering into the
25 conciliation agreement is the best approach for the

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1 Commission and I certainly support doing that under
2 these circumstances.

3 Any other discussion among the Commissioners?
4 If not, the Chair will entertain a motion.

5 Commissioner Jolley?

6 COMMISSIONER JOLLEY: Yes. In the matter of
7 MUR 06-001, conciliation agreement, Janet Napolitano,
8 Respondent -- I will read this -- "Upon the filing of
9 Respondent's Amended Campaign Finance Report from the
10 period of January 1st, 2006 through May 31st of 2006,
11 which violation occurred not later than August 31st,
12 2006, in accordance herewith, and Respondent otherwise
13 complies with the terms of the conciliation agreement
14 and the Commission shall terminate proceeding MUR 06-001
15 and the matter shall be closed."

16 CHAIRPERSON BUSCHING: Is there a second?

17 COMMISSIONER SCARAMAZZO: I would ask, does
18 that include waiving the fine?

19 COMMISSIONER JOLLEY: Yes.

20 COMMISSIONER SCARAMAZZO: Then I would second
21 that.

22 CHAIRPERSON BUSCHING: It's been moved by
23 Commissioner Jolley and seconded by Commissioner
24 Scaramazzo that we enter into the conciliation agreement
25 that's been proposed in MUR 06-001, Janet Napolitano.

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1 Any further discussion -- did I hear a call for
2 the question?

3 COMMISSIONER SCARAMAZZO: No. No.

4 CHAIRPERSON BUSCHING: Yes?

5 MR. LANG: Thank you, Madame Chair. My only
6 question is, does the Commission need to consider the
7 probable cause recommendation first before entering into
8 the conciliation agreement?

9 CHAIRPERSON BUSCHING: I'm seeing the shaking
10 of the head by Ms. Varela.

11 MS. VARELA: I think Todd's recommendation was
12 the probable cause finding, but then the conciliation
13 agreement to resolve the matter.

14 CHAIRPERSON BUSCHING: Ms. Jolley, would you be
15 willing to amend your motion to find the probable cause?

16 COMMISSIONER JOLLEY: Yes.

17 CHAIRPERSON BUSCHING: And Mr. Scaramazzo?

18 COMMISSIONER SCARAMAZZO: Fine with the second.

19 CHAIRPERSON BUSCHING: Does that satisfy you?

20 MR. LANG: Yes.

21 COMMISSIONER KUNASEK: So then the motion is
22 more in concert with the Agenda Item VIII where it uses
23 the word "and"?

24 CHAIRPERSON BUSCHING: Right.

25 COMMISSIONER SCARAMAZZO: Correct.

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1 COMMISSIONER KUNASEK: Fine.
 2 CHAIRPERSON BUSCHING: Any other discussion?
 3 If not, the Chair will call for the
 4 question, all in favor of finding probable cause and
 5 approving the conciliation agreement in MUR 06-001,
 6 Janet Napolitano, say, "aye."
 7 (Chorus of ayes.)
 8 CHAIRPERSON BUSCHING: Opposed, nay?
 9 Chair votes aye. Motion carries.
 10 We'll move to Item IX, call for public comment.
 11 This is the time for consideration and discussion of
 12 comments and complaints from the public. Action taken
 13 as a result of public comment will be limited to
 14 directing staff to study the matter or rescheduling the
 15 matter for further consideration and decision at a later
 16 date or responding to criticism.
 17 Is there any member of the public that wishes
 18 to speak? Sir?
 19 MR. EHST: Madame Chair, Eric Ehst from the
 20 Clean Elections Institute.
 21 I would just like to make a suggestion. Based
 22 on the finding and the conciliation agreement that was
 23 just entered into, I would like to suggest that the
 24 Commission look into issuing either a substantive policy
 25 statement or some other means of informing the public of

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1 what has been discussed and agreed to here so that
 2 candidates in the future are aware of this. And also
 3 that this be put into the next issue of the
 4 participating candidate guide and the trainings that are
 5 done so everybody is aware of this and don't get caught
 6 up in this issue in the future.
 7 CHAIRPERSON BUSCHING: Thank you.
 8 MR. EHST: Thank you.
 9 CHAIRPERSON BUSCHING: We'll direct staff to
 10 pay attention to the issue.
 11 MR. LANG: Will do.
 12 CHAIRPERSON BUSCHING: Are there any other
 13 members of the public that wishes to -- that wish to
 14 speak.
 15 If not, I'll entertain --
 16 COMMISSIONER KUNASEK: Madame Chair, I have a
 17 --
 18 CHAIRPERSON BUSCHING: Commissioner Kunasek?
 19 COMMISSIONER KUNASEK: -- I have a question
 20 because now I am in doubt and I might have to move for a
 21 reconsideration at the next meeting.
 22 The recommendation -- the probable cause
 23 recommendation that I have in front of me -- and I don't
 24 know if there's been another one issued or not -- does
 25 call for a \$500 fine.

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1 MR. LANG: That's correct.
 2 COMMISSIONER KUNASEK: And that's the one we
 3 voted on?
 4 MR. LANG: That's right. But then we entered
 5 into a conciliation agreement that waived it.
 6 In other words --
 7 COMMISSIONER KUNASEK: Where's the "waive it"
 8 in the conciliation agreement?
 9 COMMISSIONER JOLLEY: Page three. Number
 10 three.
 11 MR. LANG: There's just no mention of it.
 12 COMMISSIONER KUNASEK: Well, that doesn't
 13 necessarily waive it in the recommendation then.
 14 MS. VARELA: Well, no, but the recommendation
 15 is just a probable cause recommendation. Sometimes
 16 these things happen in consecutive meetings where
 17 there's a probable cause recommendation, there's an
 18 attempt to resolve it short of going into a hearing,
 19 this was just on a very expedited basis.
 20 So the recommendation was that there was
 21 probable cause to find there was a violation and a
 22 recommendation of a \$500 penalty. The conciliation
 23 agreement is an agreement between the Commission and the
 24 -- to resolve the matter. And the -- and the agreement
 25 is set forth here which does not include the payment of

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1 any money by the Napolitano Campaign.
 2 That is the conciliation agreement is what is
 3 set forth. The conciliation agreement resolves any
 4 outstanding issues: They're not going to appeal, we're
 5 going to close the matter under the terms set forth in
 6 the conciliation agreement.
 7 COMMISSIONER KUNASEK: Well, I will move for a
 8 reconsideration for the purposes of changing my vote at
 9 the next meeting or whenever is appropriate. I did not
 10 understand that when I voted on it.
 11 COMMISSIONER SCARAMAZZO: I believe,
 12 Commissioner, that I asked for clarification in my
 13 second with the motion that that \$500 waiver was
 14 considered in that also.
 15 COMMISSIONER KUNASEK: Well, but I was thinking
 16 we were voting on the recommendation as well. It says
 17 "and," and I assumed that there was still a \$500 fine in
 18 there.
 19 COMMISSIONER SCARAMAZZO: That's why I asked
 20 for clarification.
 21 COMMISSIONER KUNASEK: I understand.
 22 COMMISSIONER SCARAMAZZO: Okay.
 23 CHAIRPERSON BUSCHING: I think that we're at a
 24 motion for adjournment.
 25 COMMISSIONER JOLLEY: I'll make that motion

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1 that we adjourn this meeting.
 2 CHAIRPERSON BUSCHING: Second?
 3 COMMISSIONER SCARAMAZZO: Second.
 4 MS. VARELA: Wait. I'm sorry. Before we vote
 5 on that, maybe we can see if Mr. Gordon is still here
 6 and we can -- well, I don't know what we do. I -- to be
 7 honest with you, I'm not sure what we do about
 8 reopening.
 9 COMMISSIONER KUNASEK: Well, you have to ask
 10 for a reconsideration. And I don't know what our rules
 11 of operation are, but you ask for a reconsideration,
 12 number one, you have to be on the prevailing side, and
 13 it has to be at the next regularly -- or next publicly
 14 announced meeting.
 15 I don't think we can reconsider it at this
 16 meeting.
 17 MS. VARELA: Okay.
 18 MR. LANG: Okay.
 19 COMMISSIONER SCARAMAZZO: I think that's
 20 correct.
 21 MR. LANG: Will you look into that?
 22 (Whereupon there is no audible response from
 23 Ms. Varela.)
 24 CHAIRPERSON BUSCHING: There's been a motion by
 25 Commissioner Jolley and a second by Commissioner

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1 Scaramazzo that we adjourn.
 2 All in favor say, "aye."
 3 (Chorus of ayes.)
 4 CHAIRPERSON BUSCHING: Opposed, nay?
 5 Chair votes aye. Motion carries.
 6
 7 (Whereupon the proceeding concludes at 11:57
 8 a.m.)
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1 C E R T I F I C A T E
 2
 3 I, Angela Furniss Miller, Certified Reporter,
 4 do hereby certify that the foregoing pages numbered 1
 5 through 79, inclusive, constitute a full and accurate
 6 printed record of my stenographic notes taken at said
 7 time and place, all done to the best of my skill and
 8 ability.
 9 DATED, at Phoenix, this 5th day of September,
 10 2006.
 11
 12
 13
 14 Angela Furniss Miller, RPR
 15 Certified Reporter (AZ50127)
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